

**Statement of Nicole Austin-Hillery<sup>1</sup> of the Brennan Center for Justice at NYU School of Law**

**for House Oversight and Reform Committee Forum**

**“Lessons from Election Day 2012: Examining the Need for Election Reform”**

**Woodbridge, Virginia**

**January 14, 2013**

Mr. Connolly, Mr. Cummings and members of the Committee, thank you for the opportunity to submit this statement for the record on the challenges faced by voters during the 2012 election and, more importantly, on ways to reform our election systems to ensure that all Americans have fair and equal access to the ballot box. The Brennan Center for Justice at NYU School of Law has worked at both the state and federal level to help protect the rights of voters and has developed policy proposals that we believe can serve as the road map for making meaningful reforms to those parts of the election system that simply do not work.

The Brennan Center for Justice is a non-partisan think tank and legal advocacy organization that focuses on issues of Democracy and Justice. Among other things, we seek to ensure fair and accurate voting procedures and systems and to promote policies that maximize citizen enfranchisement and participation in elections.

We are at a crucial moment in our democracy's history. During this past election cycle, Americans demonstrated, perhaps more vividly than ever before, that their desire to fully participate in our political process is strong and that they are willing to endure myriad inconveniences to exercise their right to vote. On Election Day, millions of Americans stood in

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long lines at crowded polling stations throughout the country. One newspaper ran photos of "incredibly long lines" in polling places nationwide, from Maryland and Minnesota to North and South Carolina.<sup>2</sup> Long lines and stories of voters waiting in line long past poll closing time were rampant even here in the Commonwealth of Virginia.<sup>3</sup>

I, along with many of my colleagues, spent Election Day serving as a volunteer with the Election Protection Coalition and received reports of voters facing a range of obstacles, including voter registration problems, voting machine problems, poll worker confusion and other related issues. Problems verifying voter information on Election Day also lead to voters being forced to cast provisional ballots—which takes even more time and resources away from processing other voters. These types of occurrences, even in small numbers, significantly increased wait times for all voters. It was evident that day that our election system needs a serious upgrade.

The Commonwealth of Virginia was not immune to these troubling facts. Lines were tremendously long in Virginia on Election Day. In several polling places in Virginia, voters were still casting ballots at midnight, long after the Presidential election had been called.<sup>4</sup> At the end of Election Day. It was clear in statements made by Virginia State Board of Elections Secretary, Donald Palmer, that this problem was rampant throughout many parts of the state. Mr. Palmer reported that the long lines were in Richmond, Arlington, Virginia Beach, Roanoke and Hampton, along with Fairfax County.<sup>5</sup> This was particularly troubling given that Virginia was

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<sup>2</sup> Michael Topel, *7 Photos Incredibly Long Lines at Voting Precincts o Election Day*, LOS ANGELES DAILY NEWS, Nov. 6, 2012, available at <http://www.dailynews.com/politics-national/2012/11/7-photos-of-incredibly-long-lines-at-voting-precincts-on-election-day/>.

<sup>3</sup> *Virginia Voters Face Long Lines in a Key Swing State*, <http://blogs.wsj.com/washwire/2012/11/06/virginia-voters-face-long-lines-in-a-key-swing-county/>.

<sup>4</sup> Greg Gordon and Tony Pugh, *Voters Endure Long Waits, Irregularities in Some States*, THE SEATTLE TIMES, Nov. 6, 2012, available at [http://seattletimes.com/html/nationworld/2019621099\\_elexvoting07.html](http://seattletimes.com/html/nationworld/2019621099_elexvoting07.html).

<sup>5</sup> Read more: <http://www.foxnews.com/politics/2012/11/06/virginia-reports-long-lines-after-polls-close-1313247840/#ixzz2HolyY8Pm>

seen by many political experts as a "battleground state." It is disgraceful forcing voters to wait for hours to exercise their right to vote.

As the world's leading democracy, the United States should have a voting system that is free, fair and accessible. This nation was founded on the principle that all people are "created equal." Every eligible citizen has a responsibility to vote on Election Day. But it is the government's responsibility to make sure the system works for those who exercise this right—and does not require them to stand for hours or run a gauntlet of obstacles. Those who take the time to participate in democracy are owed at least that much.

The Brennan Center has extensively examined election administration problems and believes that the appropriate solution is a three-part policy proposal that would dramatically reduce the excessive lines that plague voting, and have the added benefit of creating a more efficient and secure electoral system. This proposal includes modernizing our voter registration system, mandating early voting and setting minimum standards for voter access.

### **Modernizing Voter Registration**

By far, the biggest problem with voting in America is our ramshackle voter registration system. Each year, millions of Americans show up at the polls on Election Day only to discover that they cannot vote because their names are missing from the voter rolls. According to a Harvard/MIT study<sup>6</sup>, in 2008, an estimated 2 to 3 million eligible Americans tried to vote but could not because of voter registration problems, and millions more were derailed in their efforts by registration deadlines and residency requirements. These problems were visible across the country in 2012. Voter registration problems exacerbate the issue that the President decried on

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<sup>6</sup> See testimony of Professor Stephen Ansolabehere of Harvard University, March 11, 2009, before the United States Senate Rules Committee.

election night – disgraceful long lines. Our current system contributes to long lines by first, making it impossible for election officials to estimate accurately how many voters might show up at a particular polling place and second, leaving it to poll workers to deal with inaccuracies in the recording of names, addresses and other information that leads to disruptions and delays in the lines. These incidences can significantly increase voter wait times.

The most effective solution for fixing the problem of long lines at the polls is to modernize our voter registration system. Doing so would enable the government to make certain that all eligible citizens who want to be registered are actually signed up, that voters stay registered when they move, and that citizens can still vote when they encounter errors on Election Day. The technology to modernize registration already exists and will save millions of dollars. It will also reduce the opportunities for fraud and abuse – something that many states, including the Commonwealth of Virginia,<sup>7</sup> were concerned with preventing during the 2012 election. The most important point about modernizing our system is simply this – there is no excuse not to do it.

Implementing a modernized voter registration system requires a few basic elements:

- A federal mandate requiring automated registration of all consenting eligible citizens within each state.
- “Portable voter registration” systems that would keep voters on the rolls, even when they move.

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<sup>7</sup> Laura Vozella, *Justice Department Upholds Va. Voter ID Law, Governor Says*, THE WASHINGTON POST, Aug. 20, 2012, available at [http://www.washingtonpost.com/blogs/virginia-politics/post/justice-department-upholds-virginia-voter-id-law/2012/08/20/76d609f6-eb2a-11e1-a80b-9f898562d010\\_blog.html](http://www.washingtonpost.com/blogs/virginia-politics/post/justice-department-upholds-virginia-voter-id-law/2012/08/20/76d609f6-eb2a-11e1-a80b-9f898562d010_blog.html).

- Fail-safe procedures to ensure that eligible voters whose names do not appear on the rolls or whose information is not current have the opportunity to correct the information *and* vote on the same day.
- A requirement that states make available online voter registration systems that would allow voters to register, check and update their voter registration records.

Under a modern system, citizens would have the option of registering whenever they interact with a government agency, and that information would be electronically transferred to the state's voter registration database. When voters move or pass away, registration information will be updated automatically. No longer will already overburdened election officials have to rely upon citizens taking the initiative to complete paper forms (and then processing them) to have accurate voter rolls.

Moreover, this plan does not require any new technology or a labor-intensive effort to computerize current voter records. The basic infrastructure already exists. Thanks to the Help America Vote Act ("HAVA"), every state has (or soon will have) a computerized statewide voter registration database capable of sharing information in some form with other government databases. Components of a fully modernized registration system are already successfully in use in at least 38 states, from Maine to Washington, Ohio to Florida.

Under modernization, the perception of government as a slow, bureaucratic obstacle to voting could be replaced by a new belief that the government helps all citizens to participate in our democracy. Most importantly, modernization would eliminate many of the problems that voters encounter on Election Day thereby cutting down on the threat of outrageously long lines at the polls and other registration related issues.

## **Mandating Early Voting During a Fixed National Time Period**

Many voters were kept from voting for hours, and some voters were kept from voting altogether, simply because their polling places could not handle the number of people who tried to vote. Far too many states failed to meet their responsibility to ensure that every voter could cast their ballot on Election Day. Early in-person voting is a sensible remedy for providing expanded options for voting that would cut down on long waits in lines on Election Day and would make it easier for voters who face obstacles to getting to the polls on Election Day. States where early in-person voting is available have seen large numbers of voters take advantage of the opportunity to cast their votes prior to Election Day --especially minority groups.<sup>8</sup> And in states where early voting hours were decreased during the past election cycle, many Black and Hispanic voters were disproportionately affected by the cutbacks to early voting.<sup>9</sup>

Early in-person voting is a simple way to ensure that every citizen has adequate access to the voting booth. Expanding the hours and days for voting can provide voting opportunities for those who have work or childcare obligations that would make it difficult for them to vote on Election Day. It can also ease the pressure and the lines on Election Day by spreading out voters over a longer period of time. Early in-person voting should be available to *all* voters. Examining ways to expand this option throughout the country is key to reforming our system and cutting down on long waits at the polls.

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<sup>8</sup> Amy Roberts, *By the Numbers: Early Voting*, CNN.com, Oct. 19, 2012, available at <http://www.cnn.com/2012/10/19/politics/btn-early-voting/index.html>.

<sup>9</sup> *Ohio Early Voting Cutbacks Disenfranchise Minority Voters* (<http://www.thenation.com/blog/169284/ohio-early-voting-cutbacks-disenfranchise-minority-voters>); *Florida Election Result: Minorities Shut Out of Early Voting by Republican Governor Rick Scott*, <http://www.policymic.com/articles/18207/florida-election-results-minorities-shut-out-of-early-voting-by-republican-governor-rick-scott>

## **Setting Minimum Standards for Voter Access**

One thing that is evident about Election Day in this country is that the experience for voters is very different depending on where they live. And even within the same state, the experience can differ from one community to the next. This is often related to where polling places are located and the resources provided to each one. There is a widespread consensus that inadequate allocation of resources – whether number of voting machines, poll workers or ballots – can lead to long lines and ultimately prevent thousands from voting.<sup>10</sup>

The solution to this problem is simple – the federal government should set minimum standards for voting machine, polling place and resource allocation – an idea Americans overwhelmingly support.<sup>11</sup> Fair and equitable allocation of polling places, polling hours, voting machines, and election staff will go a long way toward smoothing out election administration challenges and reducing long lines. The overarching goal should be that no voter should wait more than an hour to cast their ballot.

Once we set the minimum standards for holding an election, we need to invest to make sure that states meet those standards: that there are enough polling places, with enough machines and ballots and enough support. An investment in better poll worker recruitment and training would also go a long way toward reducing problems on Election Day, such as long lines. Voters in virtually every state complained about poll workers who didn't know the rules or the voting

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<sup>10</sup> In 2012, examples of inadequate resources leading to long lines include Richland County South Carolina, (Jody Barr and Jennifer Emert, *Richland County: "We Will Conduct a Thorough Investigation"*, WISTV.COM, Nov. 7, 2012, available at <http://www.wistv.com/story/20035057/what-happened-with-the-polls-in-richland-county>), Benton County Arkansas, (Amanda Ashley, *Benton County: Long Lines After Paper Ballots Run Out*, NWAHOMEPAGE.COM, Nov. 6, 2012, available at [http://nwahomepage.com/fulltext-news?nxd\\_id=379362](http://nwahomepage.com/fulltext-news?nxd_id=379362)) and Oahu, Hawaii (Karleanne Matthews, *The Election. What Happened?*, HONOLULU WEEKLY, Nov. 28, 2012, available at <http://honoluluweekly.com/feature/2012/11/the-election-what-happened/>).

<sup>11</sup> Press Release, MacArthur Foundation, *New Poll: Americans Strongly Support National Standards for Voting* (Nov. 14, 2012), available at <http://www.macfound.org/press/press-releases/new-poll-americans-strongly-support-national-standards-voting/>.

equipment. Increasing the level of well-trained professionals available on Election Day would make a significant difference in improving the experience of voters.

### **Expanding Our Voting Rolls to Include the Formerly Incarcerated**

While the problem of long lines at the polls is paramount, it is crucial that any effort to reform voting also include efforts to give every American the opportunity to vote. Voting is both a fundamental right and a civic duty. Yet, alone among modern democracies, the U.S. has laws that lock people out of the voting booth for life if they have been convicted of crimes. These laws are often a remnant of this nation's ugly Jim Crow past. The numbers involved are not small and disproportionately affect minorities. An estimated 5.85 million Americans are barred from voting because of a felony conviction.<sup>12</sup> Approximately 4 million of the disenfranchised are out of prison, or on probation or parole, and more than half of those – 2.6 million – have completed their sentences, and are working, paying taxes, and raising families just like ordinary citizens, but are relegated to permanent second-class citizenship.<sup>13</sup> About 2.2 million African-American adults are barred from voting under these laws.<sup>14</sup> Their 7.7% disenfranchisement rate is 4.5 times higher than the rate of the non-African-American population, and in three states, more than one in five African-American men are permanently disenfranchised.<sup>15</sup>

The Commonwealth of Virginia is among just three states that permanently disenfranchise the formerly incarcerated.<sup>16</sup> In encouraging recent news, the Governor of Virginia, Bob McDonnell, announced in his 2013 State of the Commonwealth address that he supports

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<sup>12</sup> The Sentencing Project, *Felony Disenfranchisement Laws in the United States* (November 2012), available at [http://sentencingproject.org/doc/publications/fd\\_bs\\_fdlawsinus\\_Nov2012.pdf](http://sentencingproject.org/doc/publications/fd_bs_fdlawsinus_Nov2012.pdf).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Bloom, Rachel, "Unjust Laws Keep Citizens From Voting Booth," Brennan Center for Justice blog, available: [http://www.brennancenter.org/blog/archives/unjust\\_laws\\_keep\\_citizens\\_from\\_voting\\_booth/](http://www.brennancenter.org/blog/archives/unjust_laws_keep_citizens_from_voting_booth/).



legislation to automatically restore voting rights for non-violent felony offenders. This is a significant step towards bringing Virginia in line with many other states that have long ago recognized that denying the right to vote to individuals who have paid their criminal justice debt to society is unjust.

We urge Congress to lead the way in ensuring voting rights restoration by passing legislation that would guarantee automatic restoration of voting rights upon completion of an individual's incarceration. Former Senator Feingold and Senator Cardin along with Rep. John Conyers have introduced legislation, the Democracy Restoration Act, during the past two Congresses that would guarantee automatic restoration with respect to federal elections. We hope that Mr. Cardin and Mr. Conyers will, again, introduce this important legislation during the 113th Congress and that the legislation will receive full passage in both houses.

### **Conclusion**

We urge Congress to give strong consideration to all of these recommendations that will move our democracy towards a more effective and efficient electoral system. Key pieces of legislation that contain some or all of these recommendations have been previously introduced and are ripe for re-introduction this Congress. Most notably, the Voter Empowerment Act (VEA) was introduced in the House by Mr. Lewis and in the Senate by Ms. Gillibrand during the 112th Congress. This comprehensive legislation contains provisions that will, among other things, modernize our voter registration system and restore voting rights to the formerly incarcerated. The Brennan Center is fully supportive of legislation that will move our democracy forward in the 21st Century by guaranteeing that all Americans will not be deterred or prevented from

casting their vote and that will ensure that voters will not have to endure major obstacles on Election Day in order to exercise this precious right.

Again, thank you for the privilege of allowing me to offer this statement today on these very important issues.